

# Initiative Measure No. 1507

filed March 9, 2016

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BILL REQUEST - CODE REVISER'S OFFICE

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BILL REQ. #: I-3231.1/16

ATTY/TYPIST: KS:eab

BRIEF DESCRIPTION:

# Initiative Measure No. 1507

filed March 9, 2016

AN ACT Relating to the use of gender-designated facilities; amending RCW 49.60.030; adding a new section to chapter 49.60 RCW; adding a new section to chapter 28A.600 RCW; creating new sections; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

## PART I

### INTENT

NEW SECTION. **Sec. 1.** The people find that privacy and public safety in places like restrooms, toilets, showers, locker rooms, saunas, and changing areas is a legitimate public concern. The people find that schools, in particular, are places where a child's privacy is to be protected and that students should never be forced into environments where they may be viewed in various states of undress by members of the opposite sex, or where they may view members of the opposite sex in various states of undress. The people find that requiring students to share restrooms, locker rooms, and changing areas with members of the opposite sex will create potential embarrassment, shame, and psychological injury to students. The people also find that a statewide mandate prohibiting schools and public accommodations from maintaining restroom policies that separate the biological male from the biological female interferes with a student's right to privacy and a parent's right to determine when their children are exposed to sensitive issues and subjects. The people also find that creating liability for public accommodations because of their restroom policies creates an uncertain and unhelpful environment for business that discourages entrepreneurship and economic development.

This measure eliminates the statewide restroom mandate and eliminates liability for maintaining a restroom policy they believe is in the best interest of those they serve.

## PART II

## **REPEALING THE HUMAN RIGHTS COMMISSION BATHROOM MANDATE**

NEW SECTION.   **Sec. 2.**   A new section is added to chapter 49.60 RCW to read as follows:

(1) The commission has adopted rules that require, among other things, businesses and schools to allow males to enter into private facilities currently separated for female use only.

(2) This act is intended to clarify legislative intent of existing law and ensure that agency rules are consistent with such law.

(3) WAC 162-32-060, requiring certain facilities be open for access by both female and male sexes, is hereby declared null and void and of no effect.

(4) Nothing in this chapter authorizes the commission to adopt rules regarding facilities designated for the exclusive use of members of the female sex or for the exclusive use of members of the male sex, nor may the commission adopt rules inconsistent with this act.

### **PART III**

#### **NO LIABILITY FOR MAINTAINING RESTROOMS, LOCKER ROOMS, AND PRIVATE FACILITIES DESIGNATED FOR USE BY MEMBERS OF A SINGLE SEX**

**Sec. 3.**   RCW 49.60.030 and 2009 c 164 s 1 are each amended to read as follows:

(1) The right to be free from discrimination because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph;

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, honorably discharged veteran or military status, sexual orientation, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, or national origin or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices; and

(g) The right of a mother to breastfeed her child in any place of public resort, accommodation, assemblage, or amusement.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

(3) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose of applying that chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce.

(4) Nothing in this chapter prohibits a public or private entity from designating private facilities under its control, such as a restroom, toilet, shower, locker room, sauna, or changing area, for the exclusive use of biological male persons only or of biological female persons only. Nothing in this chapter grants any right to a person to access a private facility designated for the exclusive use of one sex, such as a restroom, toilet, shower, locker room, sauna, or changing area of a public or private entity, if the person is not a member of the sex for which the facility is designated.

(5) Nothing in this section prevents a child under the age of eight or a person with a disability from entering a facility designated for the exclusive use by members of the opposite sex if:  
(a) A parent, guardian, supervisor, or caretaker is escorting the child or the person with a disability to or from the facility; (b) the child or person is under the custody, control, supervision, or care of the parent, guardian, supervisor, or caretaker; and (c) the

sex of the parent, guardian, supervisor, or caretaker is the same as the sex for which the facility is designated.

(6) Nothing in this chapter or any other provision of law authorizes any state or local government entity to adopt an ordinance, rule, or other policy requiring or allowing a person who is of one gender, as determined biologically or genetically, to use a facility that is for use by more than one person at a time, such as restrooms, toilets, showers, locker rooms, saunas, and changing areas that are segregated for use by persons of the opposite gender, as determined biologically or genetically.

#### **PART IV**

##### **PUBLIC SCHOOLS MUST MAINTAIN SEX SPECIFIC RESTROOM, TOILET, SHOWER, LOCKER ROOM, SAUNA, AND CHANGING AREA FACILITIES**

NEW SECTION. **Sec. 4.** A new section is added to chapter 28A.600 RCW to read as follows:

(1) As used in this section, "sex" means the biological condition of being male or female as determined at birth based on a person's anatomy, or, when necessary, at the chromosomal level.

(2)(a) Every public school restroom, locker room, and shower room accessible by multiple persons at the same time must be designated for use by male persons only or female persons only.

(b) Every public school restroom, toilet, shower, locker room, sauna, or changing area that is designated for one sex must be used only by members of that sex, and no person may enter such restroom, toilet, shower, locker room, sauna, or changing area that is designated for one sex unless he or she is a member of the designated sex.

(c) In any other public school facility or setting where a person may be in a state of undress in the presence of others, school personnel must provide separate, private areas designated for use by persons based on their sex, and no person may enter these private areas unless he or she is a member of the designated sex.

(d) This subsection (2) does not apply to a person who enters a facility designated for the opposite sex:

(i) For custodial or maintenance purposes, when the facility is not occupied by a member of the opposite sex;

(ii) To render medical assistance;

(iii) During a natural disaster, emergency, or when necessary to prevent a serious threat to good order or student safety; and

(iv) With respect to restrooms only, in circumstances where no single stall or unisex facility is available, if the person is in need of assistance and, for purposes of receiving that assistance, is accompanied by a family member, a legal guardian, or the person's designee who is a member of the designated sex for the single sex facility.

(3) (a) Students who consistently assert to school officials that their gender identity is different from their sex, and whose parent or legal guardian provides written consent to school officials, must be provided with the best available accommodation, but in no event may that accommodation permit access to a student restroom, a student locker room, or a student shower room designated for use by students of the opposite sex while students of the opposite sex are present or could be present.

(b) Acceptable accommodations may include, but are not limited to: (i) Access to single stall bathrooms; (ii) access to unisex bathrooms; or (iii) controlled use of faculty bathrooms, locker rooms, or shower rooms.

(4) (a) Students who access a public school restroom, locker room, or shower room designated for use by their sex have a right not to encounter a person of the opposite sex.

(b) Any student who, while accessing a public school student restroom, locker room, or shower room designated for use by their sex, encounters a person of the opposite sex, has a private cause of action against the school if:

(i) The school gave that person permission to use facilities of the opposite sex; or

(ii) The school failed to take reasonable steps to prohibit that person from using facilities of the opposite sex.

(c) Any civil action arising under this section must be brought in a court with jurisdiction over the area where either the student resides or the school is located at the time of filing.

(d) Any civil action arising under this section must be commenced within four years after the cause of action has accrued.

(e) Any student who prevails in an action brought under this subsection (4) may recover from the defendant public school two thousand five hundred dollars for each instance in which they encountered a person of the opposite sex while accessing a public school student restroom, locker room, or shower room designated for use by the aggrieved students' sex. The student may also recover monetary damages from the defendant public school for all psychological, emotional, and physical harm suffered.

(f) Any student who prevails in an action brought under this subsection (4) is entitled to recover reasonable attorneys' fees and costs from the defendant public school.

(g) Nothing in this section limits other remedies at law or equity available to the aggrieved student against the school.

## **PART V**

### **MISCELLANEOUS**

NEW SECTION. **Sec. 5.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 6.** This act may be known and cited as the locker room privacy and safety act.

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